service facility, whether for a special exception or a variance, shall be in writing and supported by substantial evidence contained in the record.

(21) Broadcast towers supporting one or more UHF or VHF television or FM radio broadcast or other similar broadcast antenna in any district; approval shall be subject to the provisions of Sections 73.20.6 - Security, 73.20.8 - Structural Design, 73.20.9 - Signs, 73.20.10 - Access, 73.20.11 - Landscaping, 73.20.16 - Co-Location, and 73.20.17 Building Permits of this ordinance and to the following conditions:

(a) Because it is the intent of this ordinance to minimize the number of towers and their visual impact on the city, any new television tower that is permitted shall be capable of supporting at a minimum two UHF antennas and one FM antenna in addition to other radio service antennas and microwave dishes.

(b) If a new tower is approved for a currently operating television licensee, then the existing tower must be removed and any antennas on the existing tower transferred to the newly permitted tower or to other existing towers. There should never be more television towers in the city than there are television licensees, and it is the intent of this ordinance that the number of television towers should decrease over time as licensees co-locate on new towers.

(c) Setbacks for broadcast towers shall be the greater of 25% of tower height (including antennas) or the longest distance between the perimeter of the tower base and a guy anchor plus a fifteen-foot (15') setback from any lot line for each guy anchor.

(d) Broadcast towers must be located so that in the event of tower or structure failure, the tower cannot strike another tower or tower support structure.

(e) Applications to locate broadcast towers in residential districts must contain written documentation demonstrating why it is essential for the tower to be so located

accompanied by evidence that the tower cannot be located in a non-residential district.

(f) Tower lighting shall be the minimum required to comply with federal regulations, and tower height shall be the minimum necessary to serve the licensed area.

Section 7. These amendments to the Zoning Ordinance of the City of Huntsville, Alabama, shall take effect from and after the date of their publication.

ADOPTED this the 23rd day of January, 1997

R Dowdy, Sec

President of the City Council of the City of Huntsville, Alabama

APPROVED this the 23rd day of January, 1997

Loretta Spencer

Mayor of the City of Huntsville, Alabama

commission, the municipal legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a municipal planning commission already exists, it may be appointed as the "zoning commission." (Acts 1935, No. 533, p. 1121; Code 1940, T. 37, § 780.)

Cross references. — As to transfer of powers of zoning commission to municipal planning commission, see § 11-52-7.

It is not mandatory that a zoning commission be appointed, although such a commission may be designated under this section. Rose v. City of Andalusia, 249 Ala. 333, 31 So. 2d 66 (1947).

Zoning commissions and adjustment boards not mutually exclusive. — Alabama has not established a single forum for resolution of zoning disputes. Each city may establish zoning commissions and a board of zoning adjustment. Nasser v. City of Homewood, 671 F.2d 432 (11th Cir. 1982).

Cited in Lynnwood Property Owners Ass'n v. Lands Described in Complaint, 359 So. 2d 357 (Ala. 1978).

Collateral references. — 62 C.J.S., Municipal Corporations, §§ 226(10)-226(13). 101 C.J.S., Zoning, §§ 9, 12.

82 Am. Jur. 2d, Zoning & Planning, § 48.

Alteration, extension, reconstruction, or repair of nonconforming structure or structure devoted to nonconforming use as violation of zoning ordinance. 63 ALR4th 275.

§ 11-52-80. Board of adjustment — Creation; composition; qualifications, appointment; terms of office and removal of members; vacancies; adoption of rules of procedure; meetings; record of proceedings; procedure for appeals to board from decisions of administrative officials; powers of board as to appeals.

(a) In availing itself of the powers conferred by this article, the legislative body of any incorporated city or town may provide for the appointment of a board of adjustment and, in the regulations and restrictions adopted pursuant to the authority of this article, may provide that the said board of adjustment shall in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purposes and interests and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of three years, except that in the first instance one member shall be appointed for a term of three years, two for a term of two years and two for a term of one year, and thereafter each member appointed shall serve for a term of three years or until his successor is duly appointed; provided, that in all cities having a population of not less than 175,000 nor more than 275,000 according to the most recent federal decennial census, all members of the board, including any alternate member provided for in this subsection, shall be bona fide residents and qualified electors of such cities; provided further, that the members of boards of adjustment created shall serve out their terms, and thereafter the members of such boards shall be appointed in the manner prescribed in this subsection for boards created after August 26, 1971. In addition to the five regular members provided for in this subsection two supernumerary members shall be appointed to serve on such board at the call of the chairman only in the absence of regular members and while so serving

EXHIBIT C

shall have and exercise the power and authority of regular members. Such supernumerary members shall be appointed to serve for three year terms and shall be eligible for reappointment. Appointed members may be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

(b) The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine; provided that, in cities having populations of not less than 175,000 nor more than 275,000, the board shall meet regularly once a month on a day determined by the board. Such chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and of other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

(c) Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall transmit forthwith to the board all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. Such proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(d) The board of adjustment shall have the following powers:

(1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this article or of any ordinance adopted pursuant thereto;

(2) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance; and

(3) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where,

owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship and so that the spirit of the ordinance shall be observed and substantial justice done.

(e) In exercising the powers mentioned in subsection (d) of this section, such board may, in conformity with the provisions of this article, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and, to that end shall have all the powers of the officer from whom the appeal is taken. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

(f) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called on by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified. (Acts 1935, No. 533, p. 1121; Code 1940, T. 37, § 781; Acts 1963, No. 563, p. 1185; Acts 1965, No. 588, p. 1100; Acts 1971, No. 431, p. 1163.)

Cross references. — As to prohibition against executive or secret sessions of boards of adjustment, see § 13A-14-2.

I. General Consideration.
II. Powers.
III. Variances.
A. General Consideration.
B. Factors to be considered.
IV. Appeal.

I. GENERAL CONSIDERATION.

Subsection (f) meaningless. — The last two sentences of this section were inadvertently included in the Alabama act, and are meaningless inasmuch as that act rejected review by certiorari as in the model act and adopted instead judicial review by way of an appeal de novo. Alabama Power Co. v. Brewton Bd. of Zoning Adjustment, 339 So. 2d 1025 (Ala. 1976).

Zoning is a legislative function committed to the sound discretion of municipal legislative bodies, not to the courts. As a result, local governing authorities are presumed to have a superior opportunity to know and consider the varied and conflicting interests involved, to balance the burdens and benefits and to consider the general welfare of the area involved. They, therefore, must of necessity be accorded considerable freedom to exercise discretion not diminished by judicial intrusion. Nevertheless, this discretion is not unbounded, and local authorities may not, under the guise of legislative power, impose restrictions that arbitrarily and capriciously inhibit the use of private property or the pursuit of lawful activities. When such arbitrary and capricious action is made apparent, a reviewing court will not hesitate to disturb the zoning determination as a clear abuse of discretion. Swann v. Board of Zoning Adjustment, 459 So. 2d 896 (Ala. Civ. App. 1984).

Ordinarily municipal ordinances are presumed to be valid and reasonable and within the scope of the powers granted municipalities to adopt such ordinances, and therefore, such ordinances will not be struck down unless they are clearly arbitrary and unreasonable. Zoning ordinances are no exception. Swann v. Board of Zoning Adjustment, 459 So. 2d 896 (Ala. Civ. App. 1984).

Zoning statutes and ordinances which

permit a variance from the terms of an ordinance is the same as that conferred on the board of adjustment by this section. Nelson v. Donaldson, 255 Ala. 76, 50 So. 2d 244 (1951); Board of Zoning Adjustment v. Boykin, 265 Ala. 504, 92 So. 2d 906 (1957); Alabama Power Co. v. Brewton Bd. of Zoning Adjustment, 339 So. 2d 1025 (Ala. 1976).

If a property owner is unsuccessful in his attempt to secure a variance from a board of zoning adjustment, he may perfect a de novo appeal to the appropriate circuit court. The authority of the circuit court on appeal to permit a variance from the terms of the ordinance is the same as that conferred on the board of adjustment, and the scope of the inquiry by the circuit court is limited to only those issues which could be properly presented to the board of zoning adjustment. The de novo hearing provided for under state law envisions an entirely new hearing in the circuit court as if the matter had not been tried before. Swann v. Board of Zoning Adjustment, 459 So. 2d 896 (Ala. Civ. App. 1984).

On a de novo appeal to the circuit court from a decision of the board of adjustment, the circuit court has the same authority as that conferred on the board of adjustment, and the circuit court's scope of inquiry is limited to only those issues which could be properly presented to the board of adjustment. Bedgood v. United Methodist Children's Home, 598 So. 2d 988 (Ala. Civ. App. 1992).

Transcript before board must be certified to circuit court. — A transcript of the proceedings before the board of zoning appeals must be certified to the circuit court. However, such transcript has no evidentiary value, but is for the primary purpose of permitting a better understanding of the issues tried before the board. Swann v. Board of Zoning Adjustment, 459 So. 2d 896 (Ala. Civ. App. 1984).

§ 11-52-81. Board of adjustment — Appeals to circuit court from final decision of board of adjustment.

Any party aggrieved by any final judgment or decision of such board of zoning adjustment may within 15 days thereafter appeal therefrom to the circuit court by filing with such board a written notice of appeal specifying the judgment or decision from which the appeal is taken. In case of such appeal such board shall cause a transcript of the proceedings in the action to be certified to the court to which the appeal is taken, and the action in such court shall be tried de novo. (Acts 1935, No. 533, p. 1121; Code 1940, T. 37, § 783.)

Administrative remedy. — Although this section sets out the process for appeal to the circuit court rather than to an administrative body, it has been characterized by the Alabama Supreme Court as an "administrative remedy." City of Daphne v. Dolan, 603 So. 2d 1042 (Ala. Civ. App. 1991), rev'd on other grounds sub nom. Ex parte Lake Forest Property Owners' Ass'n, 603 So. 2d 1045 (Ala. 1992).

Party aggrieved may appeal. — Any party aggrieved by the final judgment or decision of the board of zoning adjustment may, within 15 days, appeal to the circuit court, where the cause shall be tried de novo. Priest v. Griffin, 284 Ala. 97, 222 So. 2d 353 (1969).

In order for a party to have standing to challenge the decision of a zoning board of adjustment he must be a "party aggrieved." To establish himself as a "party aggrieved" he must present proof of the adverse effect the changed status of the rezoned property has, or could have, on the use, enjoyment and value of his own property. Crowder v. Zoning Bd. of Adjustment, 406 So. 2d 917 (Ala. Civ. App.), cert. denied, 406 So. 2d 919 (Ala. 1981); Gulf House Ass'n v. Town of Gulf Shores, 484 So. 2d 1061 (Ala. 1985).

Appeal is from decision of quasi-judicial body. — The appeal under this section from a decision of the board of adjustment to allow a variance, a nonconforming use, etc., is from the decision of a quasi-judicial body established by the legislature to execute and administer the zoning laws, where the legislative body has formulated the standards by which the board of adjustment should be governed in making its decisions. Ball v. Jones, 272 Ala. 305, 132 So. 2d 120 (1961).

The circuit court acts as a quasi-administrative body in reviewing the decisions of the board, and its scope of inquiry is limited to the issues that appear in the transcript of the hearing before the board of adjustment. City of Daphne v. Dolan, 603 So. 2d 1042 (Ala. Civ. App. 1991), rev'd on other grounds sub nom. Ex parte Lake Forest Property Owners' Ass'n, 603 So. 2d 1045 (Ala. 1992).